

**KENTUCKY PERSONNEL BOARD
MINUTES OF MARCH 13, 2015**

1. The regular monthly meeting of the Kentucky Personnel Board was called to order by Chairman Doug Sapp on March 13, 2015, at approximately 9:30 a.m., 28 Fountain Place, Frankfort, Kentucky.

Board Personnel Present:

Wayne "Doug" Sapp, Chairman
Larry B. Gillis, Vice Chairman
David B. Stevens, Member
David F. Hutcheson, Jr., Member
Amanda Cloyd, Member
Mark A. Sipek, Executive Director and Secretary
Boyce A. Crocker, General Counsel
Linda R. Morris, Administrative Section Supervisor
Cynthia Perkins, Administrative Specialist

Board Personnel Absent:

Donald W. "Don" Blevins, Member
Tommy W. Chandler, Member

2. **READING OF THE MINUTES OF REGULAR MEETING HELD FEBRUARY 13, 2015**

The minutes of the last Board meeting had been previously circulated among the members. Chairman Sapp asked for additions or corrections. Mr. Gillis moved to approve the minutes, as submitted. Ms. Cloyd seconded and the motion carried 5-0. The Board members signed the minutes.

3. **EXECUTIVE DIRECTOR'S REPORT**

Mr. Sipek stated that the Mandatory Direct Deposit Policy applies to Board members. Board members not signed up for direct deposit will receive a pay card, not a paper check.

Mr. Sipek advised that the April 10, 2015 Board meeting will need to be rescheduled because there will not be enough members present to form a quorum. The Board members agreed to reschedule the Board meeting to Friday, April 17, 2015.

At the conclusion of Mr. Sipek's report, Chairman Sapp called for the Personnel Cabinet's report.

4. PERSONNEL CABINET'S REPORT

The Hon. Dinah Bevington, Executive Director, came forward to present the Personnel Cabinet's report. Accompanying Ms. Bevington were Mr. Rick Davis and Ms. Alaina Myers.

Ms. Bevington provided copies of a summary and the amendments to the Personnel Cabinet's regulations for the Boards review and briefly outlined each change.

- 101 KAR 2:102 – Classified leave general requirements
- 101 KAR 2:105, Sick leave sharing procedures
- 101 KAR 2:106, Annual leave sharing procedures
- 101 KAR 2:160, Kentucky Employee Assistance Program (KEAP)
- 101 KAR 2:180, Employee performance evaluation system
- 101 KAR 3:015, Leave requirements for unclassified service

Mr. Hutcheson moved to approve the proposed amendments to the regulations. Dr. Stevens seconded and the motion carried 5-0.

At the request of the Board, Ms. Bevington explained how the language "resign with prejudice" is used by the agencies when an employee resigns from their position. If an employee resigns to avoid termination, that employee will be blocked from further employment with that agency. Career Opportunities maintains that list.

If an employee resigns in "bad standing" (i.e. without two-week notice or investigative leave), it can put agencies on notice for future consideration.

Mr. Gillis stated that state employees do not understand the implication of resignations being accepted "without prejudice." Ms. Bevington stated that some ideas the Cabinet has considered are to explain it on their website or to promulgate a regulation. Ms. Bevington stated that if the Board has any ideas, the Cabinet is open to them.

5. ORAL ARGUMENTS

None

6. CLOSED SESSION

Mr. Gillis moved that the Board go into Executive Session for the purposes of discussing complaints, proposed or pending litigation, and deliberations regarding individual adjudications. Dr. Stevens seconded. Chairman Sapp stated that the motion had been made and seconded for the Personnel Board to retire into closed Executive Session, passed by a majority vote of the members present, with enough members present to form a quorum. Pursuant to KRS 61.810(1) (c), (f), and (j), the Kentucky Open Meetings Act, the Board will now retire into closed Executive Session. Specific justification under the Kentucky Open Meetings Act for this action are as follows, because

there will be discussion of proposed or pending litigation against or on behalf of the Board; and deliberations regarding individual adjudication. The motion carried 5-0. (10:30 a.m.)

7. **Petition for Judicial Review, Franklin Circuit Court**

--Cabinet for Health and Family Services v. Kimberly Dickinson and Kentucky
Personnel Board, Civil Action No. 2015-CI-130

8. Mr. Gillis moved to return to open session. Dr. Stevens seconded and the motion carried 5-0. (11:05 a.m.)

9. **CASES TO BE DECIDED**

The Board reviewed the following cases. At that time, the Board considered the record including the Hearing Officers' findings of fact, conclusions of law and recommendations, any exceptions and responses which had been filed, and oral arguments where applicable.

A. **Donald Newell v. Energy and Environment Cabinet (2013-270)**
Deferred from February

Mr. Hutcheson, having noted Appellee's exceptions, Appellant's response and oral arguments, moved to remand this matter back to the active docket for further proceedings. Dr. Stevens seconded and the motion carried 4-0, with Mr. Gillis recusing due to a personal relationship with a witness.

B. **Jennifer Smith v. Public Protection Cabinet (2014-122 and 2014-123)**
Deferred from February

Dr. Stevens, having noted Appellee's exceptions, Appellant's response and oral arguments, moved to accept the Final Order sustaining the appeal to the extent that Appellant's ten-day suspension be amended to a three-day suspension, as attached to the minutes. Ms. Cloyd seconded and the motion carried 4-0, with Mr. Gillis recusing due to a personal relationship with a witness.

C. **Natasha Stewart v. Cabinet for Health and Family Services (2014-101)**
Deferred from February

Dr. Stevens (having noted Appellee's exceptions returned as untimely) moved to accept the Final Order sustaining the appeal. Mr. Hutcheson seconded and the motion carried 4-1, with Ms. Cloyd opposing.

D. **Khadija Shallow v. Justice and Public Safety Cabinet (Corrections)**
(2014-180 and 2014-181)

Mr. Gillis moved to accept the recommended order dismissing the appeal. Mr. Hutcheson seconded and the motion carried 5-0.

E. **Angela Roark v. Cabinet for Health and Family Services (2014-284)**

Mr. Hutcheson moved to accept the recommended order dismissing the appeal. Ms. Cloyd seconded and the motion carried 5-0.

Show Cause Orders – No Response Filed – Appeals Dismissed

Dr. Stevens moved to find that the Appellant had not responded to the show cause order and that the recommended order be accepted dismissing the appeal for failure to timely prosecute the appeal. Mr. Gillis seconded and the motion carried 5-0.

F. **José Morris v. Health and Family Services (2014-164)**

10. **WITHDRAWALS**

Mr. Gillis moved to accept the following withdrawal of appeals *en bloc* and dismiss the appeals. Ms. Cloyd seconded and the motion carried 5-0.

- A. Shaun Rich v. Cabinet for Health and Family Services & Todd Catron and Emily Martin (2 appeals)
- B. Beverly Small v. Justice and Public Safety Cabinet (Corrections)
- C. Deborah Stamper v. Transportation Cabinet (2 appeals)
- D. Lawrence Stamper v. Public Protection Cabinet

11. **SETTLEMENTS**

Ms. Cloyd moved to issue settlement orders and to sustain the appeals *en bloc* to the extent set forth in the settlements as submitted by the parties. Mr. Hutcheson seconded and the motion carried 5-0.

- A. Trisha Thomas v. Cabinet for Health and Family Services
- **Deferred from February**
- B. John Carroll v. Education and Workforce Development Cabinet
- C. Tammy Wickersham v. Cabinet for Health and Family Services

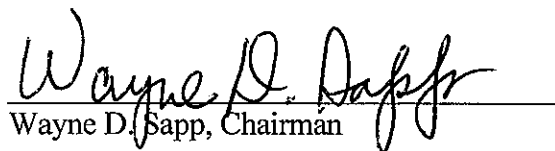
12. **PARTIAL SETTLEMENTS**

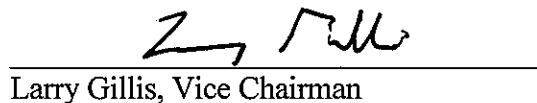
Mr. Hutcheson moved accept the partial settlements of Trasimond Soileau and Patrick Wise v. Personnel Cabinet and to sustain the appeals to the extent set forth in the settlements as submitted by the parties. Dr. Stevens seconded and the motion carried 5-0.

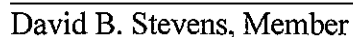
- A. Trasimond Soileau v. Personnel Cabinet
- B. Patrick Wise v. Personnel Cabinet

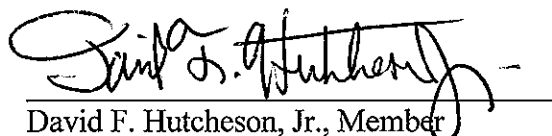
13. **OTHER**

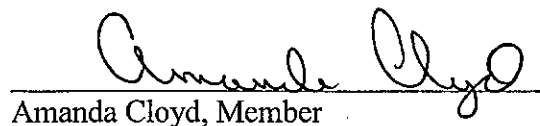
There being no further business, Mr. Hutcheson moved to adjourn. Dr. Stevens seconded and the motion carried 5-0. (11:10 a.m.)


Wayne D. Sapp, Chairman


Larry Gillis, Vice Chairman


David B. Stevens, Member


David F. Hutcheson, Jr., Member


Amanda Cloyd, Member

**COMMONWEALTH OF KENTUCKY
PERSONNEL BOARD
APPEAL NOS. 2014-122 AND 2014-123**

JENNIFER R. SMITH

APPELLANT

**FINAL ORDER
ALTERING HEARING OFFICER'S
VS. FINDINGS OF FACT, CONCLUSIONS OF LAW
AND RECOMMENDED ORDER**

**PUBLIC PROTECTION CABINET
AMBROSE WILSON, IV, APPOINTING AUTHORITY**

APPELLEE

** ** ** ** **

The Board at its regular March 2015 meeting having considered the Findings of Fact, Conclusions of Law and Recommended Order of the Hearing Officer dated January 8, 2015, having Appellee's exceptions, Appellant's response, oral arguments and being duly advised,

IT IS HEREBY ORDERED that the Findings of Fact, Conclusions of Law and Recommended Order of the Hearing Officer be altered as follows:

A. **Delete** Findings of Fact numbers 12 and 13 and substitute the following:

12. The Board finds Appellant did admit at the evidentiary hearing that she had said to her coworkers on multiple occasions that she sometimes "feels like ripping people's heads off." The Board finds that making these comments, even if as Appellant testified that they were made in a "joking manner," is no joking matter, and must be taken seriously.

13. The Board finds that Appellant was never counseled on the inappropriateness of her words, that no reference to these comments was ever made in her evaluations, and that she was never disciplined for having said them. Not a single witness testified that the Appellant stated these words in a loud, angry, or agitated tone of

voice, or that Appellant had ever approached anyone in a threatening manner, or committed an overt act of physical aggression. And while Appellant did admit that she has a license to carry a concealed weapon and had told her coworkers about it (in the context of discussing her prior job repossessing vehicles), no connection was established between Appellant's owning a gun and the comments she made, except for vague assertions by her co-workers that "you can't be too careful."

B. **Delete** Conclusions of Law numbers 2 and 3 and substitute the following:

2. The Board agrees with the Hearing Officer that Appellant's comments were sufficient to warrant being placed on directed sick leave, but does not agree with the Hearing Officer that a written reprimand would be the appropriate punishment for the lack of good behavior. The Board does agree with the Hearing Officer that a lesser punishment than a ten-day suspension is appropriate and concludes that the appropriate punishment for Appellant's comments would be a three-day suspension without pay.

3. The Board concludes that the ten-day suspension of the Appellant was excessive based on the fact that the Appellant had never been counseled, disciplined, or negatively evaluated for having made the comments. In addition, the Board notes the Appellant is not alleged to have made the comments in a loud or threatening manner and was never physically aggressive with any of her coworkers. Based on these circumstances, the Board concludes the Appellee did not establish just cause for the ten-day suspension of the Appellant.

C. **Delete** the Recommended Order, and substitute the following:

IT IS HEREBY ORDERED that the appeals of **JENNIFER R. SMITH VS. PUBLIC PROTECTION CABINET, (APPEAL NOS. 2014-122 AND 2014-123)** be **DISMISSED** with regard to Appellant being placed on agency directed sick leave, and **SUSTAINED TO THE EXTENT** that Appellant's ten-day suspension without pay be amended to a three-day

suspension without pay. The Board orders that Appellee shall award Appellant with back pay and benefits lost as a result of the ten-day suspension being amended to a three-day suspension, reimburse Appellant for any leave time used attending the evidentiary hearing and pre-hearing conferences, and otherwise make Appellant whole. [KRS 18A.105, KRS 18A.095(25) and 200 KAR 12:030.]

IT IS FURTHER ORDERED that the Findings of Fact, Conclusions of Law and Recommended Order of the Hearing Officer as Altered be, and they hereby are, approved, adopted and incorporated herein by reference as a part of this Order and the Appellant's appeals are **SUSTAINED to the extent herein.**

The parties shall take notice that this Order may be appealed to the Franklin Circuit Court in accordance with KRS 13B.140 and KRS 18A.100.

SO ORDERED this 17th day of March, 2015.

KENTUCKY PERSONNEL BOARD



MARK A. SIPEK, SECRETARY

A copy hereof this day mailed to:

Hon. Paul Fauri
Hon. Cannon Armstrong
Lynn K. Gillis
Sherry Butler

**COMMONWEALTH OF KENTUCKY
PERSONNEL BOARD
APPEAL NO. 2014-101**

NATASHA STEWART

APPELLANT

**FINAL ORDER
ALTERING HEARING OFFICER'S
VS. FINDINGS OF FACT, CONCLUSIONS OF LAW
AND RECOMMENDED ORDER**

**CABINET FOR HEALTH AND FAMILY SERVICES
J.P. HAMM, APPOINTING AUTHORITY**

APPELLEE

** ** ** ** **

The Board at its regular March 2015 meeting having considered the Findings of Fact, Conclusions of Law and Recommended Order of the Hearing Officer dated December 30, 2014, (having noted Appellee's exceptions were returned as untimely) and being duly advised,

IT IS HEREBY ORDERED that the Findings of Fact, Conclusions of Law and Recommended Order of the Hearing Officer be altered as follows:

A. **Delete** Conclusions of Law numbers 2, 3 and 4 and substitute the following:

2. The Board concludes these actions occurred as discipline for a child in the Appellant's own home and thus were not the type of behavior which could prejudice her ability to do her job with adults or constitute unprofessional behavior such as would dampen the public's confidence and the integrity of public servants. As such, the Appellee has failed to establish just cause for the disciplinary action against the Appellant and her demotion was excessive and erroneous.

B. **Delete** the Recommended Order, and substitute the following:

IT IS HEREBY ORDERED that the appeal of NATASHA L. STEWART V. CABINET FOR HEALTH AND FAMILY SERVICES, (APPEAL NO. 2014-101) be **SUSTAINED**, that Appellant be reinstated to her position of Social Service Clinician I, or a position with like pay and status, with back pay, and otherwise be made whole. **Further**, the Board orders the matter be expunged from Appellant's personnel records. The Board orders the Appellee shall reimburse the Appellant for any leave time she used attending the evidentiary hearing and any pre-hearing conferences at the Personnel Board. (KRS 18A.105, KRS 18A.095(25) and 200 KAR 12.030.)

IT IS FURTHER ORDERED that the Findings of Fact, Conclusions of Law and Recommended Order of the Hearing Officer as Altered be, and they hereby are, approved, adopted and incorporated herein by reference as a part of this Order and the Appellant's appeal is **SUSTAINED**.

The parties shall take notice that this Order may be appealed to the Franklin Circuit Court in accordance with KRS 13B.140 and KRS 18A.100.

SO ORDERED this 17th day of March, 2015.

KENTUCKY PERSONNEL BOARD



MARK A. SIPEK, SECRETARY

A copy hereof this day mailed to:

Hon. Rebecca Wooldridge
Hon. Monica Hill
J.P. Hamm